IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE V.V.S.RAO
WRIT PETITION NO : 5904 of 2004

Between:
Veesam Lakshminarayana, S/o.Pichaiah,
R/o.Ithavaram Village, Krishna Dist.

..... PETITIONER

AND

1 The Election officer, Ithavaram, Nandigama Mandal, Krishna Dist.
2 The District Election Authority-Cum-The District Collector, Krishna at Machilipatnam.
3 Veesam Narasimha Rao, S/o.Guravaiah,
R/o.Ithavaram Village, Nandigama Mandal,Krishna Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or a writ more particularly one in the nature of writ of certiorari calling for the records relating and connected to O.P.No. 7/2001 on the file of the Election Tribunal-cum-Junior Civil Judge, Nandigama and set aside the impugned order dt.19-3-2004 passed therein as the same is arbitrary, illegal, and violative of principles of natural justice.

Counsel for the Petitioner: MR.P.PRABHAKAR RAO

Counsel for Respondent No.1 : Mr.V.V.Prabhakara Rao

Counsel for Respondent No.2: G.P. for Panchayat Raj

Counsel for Respondent No.3 : Mr.V.V.L.N.Sarma

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5904 OF 2004

ORDER:

The election to the office of the Sarpanch of Ithavaram village, Nandigama Mandal, Krishna District was held on 14.08.2001 and the petitioner was elected with 569 votes. The third respondent herein, who was polled 567 votes assailed the election by filing O.P.No.7 of 2001 under Section 233 of A.P.Panchayat Raj Act, 1994 and Rule 2 of A.P.Panchayat Raj (Election Tribunals in Respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995. The petitioner herein opposed the election petition and contested the matter. It appears, the third respondent examined P.Ws.1 and 2 on his behalf and the petitioner examined himself as R.W.1. Arguments were also heard and the matter was reserved for orders of the learned Election Tribunal-cum-the Court of Junior Civil Judge, Nandigama.

The learned Election Tribunal passed the impugned order dated 19.03.2004 in O.P.No.7 of 2001, which is in the interlocutory nature. By the impugned order, the learned Tribunal ordered recounting of votes and called for ballot boxes. When this writ petition is filed assailing the impugned order, this Court ordered Rule nisi and suspended the impugned order. Now the third respondent has come forward with an application being W.V.M.P.NO.1025 of 2004 for vacating the interim orders. At this stage itself the matter was heard finally with the consent of the learned counsel for both the parties.

Learned counsel for the petitioner Sri P.Prabhakar Rao placed strong reliance on the decision of a Division Bench of this Court in **Shaik Khasim Bi v Principal Magistrate (Election Tribunal)**[1] and on a recent judgment of the Supreme Court in **Chandrika Prasad Yadav v State of Bihar**[2] in support of his contention that the impugned order is unsustainable for non-disclosure of reasons and misdirection in law.

Per contra, the learned counsel for the third respondent Sri V.V.L.N.Sarma has taken this Court through election petition being

O.P.No.7 of 2001 in support of the contention that the third respondent herein has raised objections at every stage of counting, that the difference of votes being less than 1%, it was competent for the learned Tribunal for order recounting.

The judgment of the Division Bench of this Court on which the learned Tribunal placed reliance is an authority for the proposition that the Election Commission has no power to issue any notification empowering the Election Officials to recount the polled votes, if the margin of votes is less than 1%. The Division Bench judgment is also an authority for the proposition that unless and until the defeated candidate files an application before the Election Officer at the stage of counting and makes out a case by properly pleading material irregularities at the time of counting, the Election Tribunal cannot order recounting of votes. Curiously, the Election Tribunal proceeded on the premise that the Division Bench laid down law to order recounting, if the margin of votes is less than 1%. The learned Tribunal has not understood the ratio of the Division Bench correctly and therefore, the order passed suffers from misdirection in law.

In **Chandrika Prasad Yadav v State of Bihar** (supra), the Supreme Court reiterated the law. It was held at paragraphs 20 and 21 as under.

> 20. It is well settled that an order of recounting of votes can be passed when the following conditions are fulfilled:
>
> i) A *prima facie* case;
>
> ii) Pleading of material facts stating irregularities in counting of votes;
>
> iii) A roving and fishing inquiry shall not be made while directing recounting of votes; and
>
> iv) An objection to the said effect has been taken recourse to.
>
> 21. The requirement of maintaining the secrecy of ballot papers must also be kept in view before a recounting can be directed. **Narrow margin of votes between the returned candidate and the election petitioner by itself would not be sufficient for issuing a direction for recounting.**
>
> (emphasis supplied)

The impugned order challenged in the writ petition does not disclose any reasons except stating that the margin of votes is less than 1%. The decision cited by the learned counsel for the third respondent in **Vanguri Mariamma v Kandukuri Gangamma**[3] lays down that even when the matter is pending at the trial stage, the Election Tribunal can order recounting. I fail to understand how this ruling would be relevant especially when no such contention is raised.

After perusing the impugned order and also going through the

pleadings in this case, I am convinced that the impugned order cannot be sustained for the reasons mentioned hereinabove. The writ petition is therefore allowed and the impugned order is set aside. Considering the request of the learned counsel for both the parties, Election Tribunal is directed to dispose of the matter within a period of six weeks from the date of receipt of a copy of this order. No costs.

(V.V.S.RAO,J)

17.09.2004.
pln

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday, the Seventeenth Day of September, Two Thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Election Officer, Ithavaram, Nandigama Mandal, Krishna District.
2. The District Election Authority-cum-The District Collector, Krishna at Machilipatnam.
3. 2CCs to the G.P.for Panchayat Raj, High Court Buildings, Hyderabad (OUT).
4. 2 CD copies.

---

[1] 1999 (3) ALD 350 (DB)

[2] 2004 AIR SCW 2163

[3] 2004 (4) ALT 185